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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1135 OF 2007

The Secretary,
Kritsing Shikshan Mandal,
A & P.Yedemachhindra, Tal.Walva,
District Sangli. Petitioner

versus

Smt.Suvarna Manik Mali Respondents
and others

Mr.Vishal Kanade for petitioner.
Mr.Prashant P. Kulkarni for respondent no.1.

CORAM : A.S.OKA, J.

DATE : 02nd April 2007

PC :

1. Heard learned advocates appearing for the parties. Rule. Advocate for first respondent waives service. Service to other respondents is not necessary.

2. By this petition under Article 227 of the Constitution of India, the challenge is to the order dated 9th January 2007 passed by the learned Trial Judge by which applications made by the petitioner (original first defendant) at

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Exhibits 38 and 51 have been rejected. One of the two applications is under section 9A of the Code of Civil Procedure, 1908 and the other one is under Order VII, Rule 11 of the said Code of 1908.

3. Insofar as application under section 9A of the said Code of 1908 is concerned, in view of a decision of a learned Single Judge of this Court in Solapur Social Urban Co-operative Bank Ltd. V/s. Nigam A. Mannan Beskar reported in [(2006)4-Bom.C.R.-217] the said application will not be maintainable as the view taken is that Section 9A of the said Code of 1908 stands repealed in view of the amendment made to the said Code of 1908 in the year 2002.

4. Insofar as second application is concerned, from the prayers made therein it appears that the petitioner has invoked clause (d) of Rule 11 of Order VII of the said Code of 1908. A perusal of the application shows that a request is made to reject the plaint of the original plaintiff. It is true that an application for rejection of the plaint can be entertained by a Court at any stage.

5. Insofar as rejection of the application under section 9A is concerned, it is difficult to find fault with the impugned order in view of the legal position as narrated above. So far as the second application for rejection of the plaint is concerned, considering the averments made in the application, the learned Trial Judge was justified in not granting the same. The learned advocate for the petitioner submitted that the remedy of approaching the Grievance Committee set up under the orders of this Court is available to the original plaintiff and, therefore, the jurisdiction of the Trial Court is barred. The said contention is not specifically raised in the application made by the petitioner. Though no fault can be found with the impugned order, notwithstanding the impugned order, a liberty will have to be granted to the petitioner to raise the aforesaid contention by filing a fresh application for invoking power under Rule 11 of Order VII of the said Code of 1908.

6. Hence, the petition is disposed of by passing the following order :-

(a) The impugned judgement and order is confirmed;

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(b) Notwithstanding confirmation of the impugned judgement and order, it will be open for the petitioner to take out a fresh application for invoking the power under Order VII, Rule 11 of Code of Civil Procedure, 1908;

(c) If such an application is made, the Trial Court will decide the same in accordance with law;

(d) All contentions of both the parties in the pending suit are expressly kept open;

(e) Writ Petition is disposed of in the above terms with no orders as to costs;

(f) All concerned to act an ordinary copy of this order duly authenticated and issued by the Registry of this Court.

(A.S.OKA, J.)